

SECOND REGULAR SESSION

HOUSE BILL NO. 2121

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CAMPBELL.

Read 1st time March 7, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

5003L.011

AN ACT

To amend chapter 475, RSMo, by adding thereto seven new sections relating to standby guardianship.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 475, RSMo, is amended by adding thereto seven new sections, to be
2 known as sections 475.500, 475.503, 475.506, 475.509, 475.512, 475.515, and 475.518, to read
3 as follows:

475.500. As used in sections 475.500 to 475.518, the following terms mean:

- 2 (1) "Attending physician", the physician who has primary responsibility for the
3 treatment and care of a qualified parent;
- 4 (2) "Court", the Missouri probate court or division thereof having jurisdiction in
5 matters relating to the affairs of decedents and protected persons;
- 6 (3) "Designation", a writing that is voluntarily executed in accordance with the
7 requirements of section 475.506 and signed by a parent, and names a person to act as
8 standby guardian;
- 9 (4) "Determination of debilitation", a written determination made by an attending
10 physician to a reasonable degree of medical certainty that a qualified parent is chronically
11 and substantially unable to care for a minor child as a result of a debilitating illness,
12 disease, or injury. Such a determination shall include the physician's medical opinion
13 regarding the nature, cause, extent, and probable duration of the parent's debilitating
14 condition;
- 15 (5) "Determination of incompetence", a written determination by an attending
16 physician to a reasonable degree of medical certainty that a qualified parent is chronically
17 and substantially unable to understand the nature and consequences of decisions

18 concerning the care of a minor child as a result of a mental or organic impairment and is
19 consequently unable to care for the child. Such a determination shall include the
20 physician's medical opinion regarding the nature, cause, extent, and probable duration of
21 the parent's incompetence;

22 (6) "Minor", an unemancipated person less than eighteen years of age;

23 (7) "Parent", a biological or adoptive parent, and includes a person, other than a
24 parent whose parental rights have not been terminated, who has physical custody of a child
25 and who has been awarded custody by a court or claims a right to custody;

26 (8) "Qualified parent", a parent who is diagnosed, as evidenced in writing, by a
27 licensed physician to be afflicted with a progressive or chronic condition caused by illness,
28 disease, or injury from which, to a reasonable degree of medical certainty, the patient
29 cannot recover;

30 (9) "Standby guardian", a person eighteen years of age or older, a resident or
31 nonresident of this state, who in accordance with this section is designated in writing or
32 approved by the court to temporarily assume the duties of guardian of the person or
33 guardian of the property, or both, of a minor child on behalf of or in conjunction with a
34 qualified parent upon the occurrence of a triggering event. Standby guardian shall be
35 construed to enable the parent to plan for the future care of a child without terminating
36 parental or legal rights and to give the standby guardian the authority to act in a manner
37 consistent with the known wishes of a qualified parent regarding the care, custody, and
38 support of the minor child;

39 (10) "Triggering event", the event upon the occurrence of which the standby
40 guardian may be authorized to act. The triggering event shall be specified in the court
41 order or written designation and shall be the earlier of a determination of incompetence
42 or the death of the qualified parent; except that, in the case of a standby guardian
43 judicially approved pursuant to section 475.503, the triggering event may also be specified
44 as the qualified parent's written consent to the commencement of the standby guardian's
45 authority. For a standby guardian designated pursuant to section 475.506, the triggering
46 event may also be specified as a determination of debilitation of the qualified parent and
47 such parent's written consent to the commencement of the designated standby guardian's
48 authority.

475.503. 1. Upon petition of any person, the probate court of the jurisdiction in
2 which a child resides may approve a person as standby guardian for a child of a qualified
3 parent upon the occurrence of a specified triggering event. If requested in the petition, the
4 court may also approve an alternate standby guardian identified by the petitioner to act
5 if at any time after approval pursuant to this section the standby guardian is unable or

6 **unwilling to assume the responsibilities of the standby guardianship.**

7 **2. The petition shall state:**

8 **(1) The name, age, domicile, actual place of residence, and post office address of the**
9 **minor, if known, and if any such facts are unknown, the efforts made to ascertain such**
10 **facts;**

11 **(2) The estimated value of the minor's real and personal property;**

12 **(3) If the minor has no domicile or place of residence in this state, the county in**
13 **which the property, or major part thereof, of the minor is located;**

14 **(4) The name and address of the petitioner and the petitioner's relationship to the**
15 **child, the name and address of the child's qualified parent, and the name and address of**
16 **any other parent of the child whose identity and whereabouts are known to the petitioner**
17 **or can reasonably be ascertained;**

18 **(5) The nature of the proposed triggering event, including when a qualified parent's**
19 **consent will be effective in cases where such consent is chosen as the triggering event;**

20 **(6) Whether a determination of incompetence or debilitation has been made and,**
21 **if so, when and by whom;**

22 **(7) Whether there is a significant risk that the qualified parent will imminently**
23 **become physically or mentally incapable of caring for the child or die as the result of a**
24 **progressive chronic condition or illness; except that, a petitioner shall not be required to**
25 **submit medical documentation of a parent's medical status with the petition;**

26 **(8) The name and address of the person proposed as standby guardian and any**
27 **alternate standby guardian, and whether the petition requests that such person be given**
28 **authority as guardian of the person or guardian of the property of the minor, or both;**

29 **(9) Any known reasons as to why the child's other parent is not assuming or should**
30 **not assume the responsibilities of a standby guardian;**

31 **(10) Whether there is any prior judicial history or pending litigation regarding**
32 **custody of the child; and**

33 **(11) The name and address of the attending physician.**

34 **3. Upon the filing of a petition, notice of the filing shall promptly be given to each**
35 **parent of the child whose identity and whereabouts are known to the petitioner or can be**
36 **found with reasonable efforts. The court shall direct the issuance of summons to the child**
37 **if the child is fourteen years of age or older and the proposed standby guardian and**
38 **alternate standby guardian, if any, and such other persons as appear to the court to be**
39 **proper or necessary parties to the proceedings, including the child's parents, guardian,**
40 **legal custodian, or other person standing in loco parentis, if the identity and whereabouts**
41 **of such persons are known. Service of the summons shall be made pursuant to state law.**

42 **4. An order approving a standby guardian shall not be entered without a hearing**
43 **if:**

44 **(1) There is another known parent, stepparents, adult siblings, or other adult**
45 **related to the child by blood, marriage, or adoption who requests a hearing within ten days**
46 **of the date that notice of the filing was sent; or**

47 **(2) There is other pending litigation regarding custody of the child.**

48 **5. Prior to any hearing on the petition, the court may appoint an attorney as**
49 **guardian ad litem to represent the child. If a petition is filed by any person other than a**
50 **parent of the child, the court shall appoint a guardian ad litem. The qualified parent shall**
51 **not be required to appear in court if the parent is medically unable to appear, except upon**
52 **motion for good cause shown.**

475.506. 1. In accordance with the relevant provisions of this chapter and a finding
2 **that the child's parent is a qualified parent and appointment of a standby guardian is in**
3 **the best interest of the child, the court shall appoint a proper and suitable person as**
4 **standby guardian and, if requested, a proper and suitable person as alternate standby**
5 **guardian; except that, when a petition is filed by a person other than a parent having**
6 **custody of the child, the standby guardian shall be appointed only with the consent of the**
7 **qualified parent unless the court finds that such consent cannot be given for medical**
8 **reasons.**

9 **2. The order shall specify the triggering event and shall provide that the authority**
10 **of the standby guardian shall be effective upon receipt by the standby guardian of a**
11 **determination of incompetence or a certificate of death, or the earlier of either, or if so**
12 **requested in the petition, upon receipt by the standby guardian of a written consent of the**
13 **qualified parent and filing of the consent with the court. The written consent shall be**
14 **executed after the entry of the court order and signed by the qualified parent or by another**
15 **person in the parent's presence and on the parent's behalf.**

16 **3. As soon as practicable after entry of the order, a copy shall be served on the**
17 **standby guardian.**

18 **4. A standby guardian shall have the powers and duties of a guardian of the person**
19 **and a guardian of the property of a minor unless otherwise specified in the order.**

20 **5. The standby guardian shall file with the court, as soon as practicable but in no**
21 **event later than thirty days after the death of the parent, a determination of incompetence**
22 **or consent, a copy of the certificate of death, or a determination of incompetence or consent**
23 **of the qualified parent upon which his or her authority is based. Failure to file within the**
24 **time specified shall be grounds for the court to rescind the authority of the standby**
25 **guardian sua sponte or upon petition of any person; except that all acts undertaken by the**

26 standby guardian on behalf of and in the interests of the child shall be valid and
27 enforceable.

2 475.509. 1. A parent may execute a written designation of a standby guardian at
any time. The written designation shall state:

3 (1) The name, address, and date of birth of the child affected;

4 (2) The triggering event; and

5 (3) The name and address of the person designated as standby guardian or
6 alternate standby guardian.

7
8 The written designation shall be signed by the parent. Another adult may sign the written
9 designation on behalf of the parent if the parent is physically unable to do so, provided the
10 designation is signed at the express request of the parent and in the presence of the parent.
11 The designated standby guardian or alternate standby guardian shall not sign on behalf
12 of the parent. The signed designation shall be delivered to the standby guardian and any
13 alternate standby guardian named as soon as practicable.

14 2. After such delivery of the designation, the authority of the standby guardian to
15 act for a qualified parent shall commence upon the occurrence of the specified triggering
16 event and receipt by the standby guardian of:

17 (1) A determination of competence;

18 (2) A certificate of death of the parent; or

19 (3) A determination of debilitation and the qualified parent's written consent to
20 such commencement, signed by the parent or another person on the parent's behalf and
21 at the parent's direction as provided in subsection 1 of this section for the designation.

22 3. A standby guardian under a designation shall have the authority of a guardian
23 of the person and a guardian of the property of the child unless otherwise specified in the
24 designation.

25 4. A designated standby guardian or alternate standby guardian shall file a petition
26 for approval as standby guardian. The petition shall be filed as soon as practicable after
27 the occurrence of the triggering event but in no event later than thirty days after the date
28 of commencement of his or her authority. The authority of the standby guardian shall
29 cease upon his or her failure to so file, but shall recommence upon such filing. The petition
30 shall be accompanied by a copy of the designation and any determinations of incapacity
31 or debilitation or a certificate of death.

32 5. The provisions of subsections 3, 4, and 5 of section 475.503 shall apply to a
33 petition filed pursuant to this section. The court shall enter an order approving the
34 designated guardian as standby guardian upon a finding that:

35 (1) The person was designated as standby guardian pursuant to this section and the
36 designation has not been revoked;

37 (2) A determination of incompetence was made, a determination of debilitation was
38 made and the parent consented to the commencement of the standby guardian's authority,
39 or the parent died as evidenced by a death certificate;

40 (3) The best interests of the child will be served by approval of the standby
41 guardian; and

42 (4) If the petition is by an alternate standby guardian, that the designated standby
43 guardian is unwilling or unable to serve.

475.512. 1. If the triggering event is death of the qualified parent, within ninety
2 days following the occurrence of the triggering event or, if later, commencement of the
3 standby guardian's authority, the standby guardian shall petition for appointment of a
4 guardian for the child as otherwise provided by law or initiate proceedings to determine
5 custody of the child pursuant to state law, or both.

6 **2.** In all other cases, a standby guardian shall promptly after the occurrence of the
7 triggering event initiate such proceedings to determine permanent custody, absent
8 objection by the qualified parent. The petition shall be accompanied by:

9 (1) The court order approving or written designation of a standby guardian; and

10 (2) The attending physician's written determination of incompetence or
11 debilitation, or a verification of death.

475.515. 1. The authority of a standby guardian approved by the court may be
2 revoked by the qualified parent by the parent's filing of a notice of revocation with the
3 court. The notice of revocation shall identify the standby guardian or alternate standby
4 guardian to which the revocation will apply. A copy of the revocation shall also be
5 delivered to the standby guardian whose authority is revoked and any alternate standby
6 guardian who may then be authorized to act.

7 **2.** At any time following a standby guardian's approval by the court, the standby
8 guardian may decline to serve by filing a written statement of refusal with the court and
9 having the statement personally served on the qualified parent and any alternate standby
10 guardian who may then be authorized to act.

11 **3.** When a written designation has been executed but is not yet effective because the
12 triggering event has not yet occurred, the parent may revoke or the prospective standby
13 guardian may refuse designation by notifying the other party in writing.

14 **4.** A written designation may also be revoked by the execution of a subsequent
15 inconsistent designation.

16 **5.** When a standby guardian's authority is effective upon debilitation or

17 incompetence of the qualified parent, the standby guardian's authority to act on behalf of
18 the parent continues even though the parent is restored to health unless the qualified
19 parent notifies the guardian and, if appropriate, the court in writing states that the standby
20 guardian's authority is revoked upon such restoration or otherwise.

21 **6. If at any time the court finds that the parent no longer meets the definition of a**
22 **qualified parent, the court shall rescind its approval of the standby guardian.**

475.518. A child's parent, stepparent, adult sibling, or any adult related to the child
2 **by blood, marriage, or adoption may petition the court that approved the standby**
3 **guardian at any time following such approval and prior to any termination of the standby**
4 **guardianship for review of whether continuation of the standby guardianship is in the best**
5 **interests of the child. Notice of the filing of a petition shall promptly be given to the**
6 **standby guardian, the child if the child is twelve years of age or older, and each parent of**
7 **the child whose identity and whereabouts are known or could reasonably be ascertained.**